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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 15, 1997

By Hand

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: Further Notice of Proposed Rulemaking
CC Docket No. 94-129

Dear Mr. Caton:

On behalf of TPV Services, Inc. ("TPV Services"), and pursuant to Sections 1.415 and 1.419 of the Commission's rules, enclosed please find an original and eleven (11) copies and two diskettes containing the Comments of TPV Services in the above-referenced proceeding.

Please direct any questions regarding this matter to the undersigned.

Sincerely,

William J. Gildea III

Michael R. Gardner
William J. Gildea III
Counsel for TPV Services

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Subscriber Carrier) CC Docket No. 94-129

Selection Changes Provisions of the)
Telecommunications Act of 1996)

Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)
_____)

COMMENTS OF TPV SERVICES, INC.

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September 15, 1997

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SUMMARY

TPV Services, Inc. ("TPV Services") currently provides computer-assisted independent third-party verification services ("TPV") for telecommunications providers and telemarketing companies. Due to the inherent conflicts of interest of both telecommunications carriers and their commission-based telemarketing agents, TPV Services believes that "true independent third-party verification" remains the only *consumer-neutral* option left to ensure proper verification in all instances of proposed PC changes, as well as the accompanying submissions of PC changes and PC freezes.

Accordingly, as the Commission seeks to implement Section 258 of the Communications Act in this subject *Further Notice of Proposed Rulemaking*, TPV Services urges the Commission to strengthen its current anti-slamming rules by facilitating the widest possible use of independent third-party verification services. In sum, TPV Services proposes that the Commission (1) define an "independent third-party verification entity;" (2) require TPV registration with the FCC; (3) permit, and in some instances require, TPVs to submit PC changes and PC freezes, with all attendant liability; (4) apply its proposed rules to in-bound calls; and (5) require all LOAs to have a "unique identifier." TPV Services submits that adoption of these proposals will strengthen the integrity of, and provide telecommunications carriers and sales agents the necessary assurances that they can rely on, the Commission's third-party verification rules.

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Long Distance Carriers)	
_____)	

COMMENTS OF TPV SERVICES, INC.

TPV Services, Inc. ("TPV Services") by its attorneys, hereby files Comments in response to the *Further Notice of Proposed Rulemaking* ("FNPRM") (FCC 97-248) adopted July 14, 1997 in the above-referenced proceeding.

I. Introduction

TPV Services is a Houston-based company that currently provides computer-assisted independent third-party verification services (hereinafter, "TPV" or "independent third-party verification") for telecommunications providers and telemarketing companies.¹ TPV Services applauds the Commission's continued

¹ TPV Services' computer-assisted verification system utilizes a pre-recorded, multi-lingual script which is tailored to the particular requirements of individual state laws. The system is less expensive on a per-call basis than live operator verification which is currently the industry standard. Accuracy is guaranteed because the

efforts to reduce unauthorized preferred carrier ("PC") changes through the implementation of Section 258 of the Telecommunications Act of 1996.² However, notwithstanding the vigilance of both the Commission, and now Congress, incidents of "slamming" continue to rise. Moreover, given the increased level of competition among long distance providers, the emergence of local competition, and the related market for "bundled service" offerings, consumers are increasingly at risk due to the inherent conflicts of interest of both telecommunications carriers and their commission-based telemarketing agents. As a result, TPV Services believes that "true independent third-party verification" remains the only *consumer-neutral* option left to ensure proper verification in all instances of proposed PC changes, as well as the accompanying submissions of PC changes and PC freezes.

Accordingly, as the Commission seeks to both bolster its verification procedures and implement the economic disincentives of Section 258, TPV Services offers the following proposals intended to strengthen the integrity of, and provide telecommunications carriers and sales agents the necessary assurances that they can rely on, the Commission's third-party verification rules. TPV Services believes adoption of these proposals by the Commission will enhance consumer protection while facilitating an accurate, cost effective, and easily accessible means of

recorded consumer responses are verified multiple times by TPV Services' employees and through a quality control review process. Consumer responses are digitally recorded and easily retrievable.

² 47 U.S.C. § 258, Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Section 258").

confirming telecommunications carriers' marketing efforts.

II. Increased Reliance on TPV Will Solidify Prior FCC Efforts to Eliminate Slamming While Ensuring Congress' Goal of Section 258 Is Realized

The Commission has been addressing the issues of unauthorized PC changes since 1985.³ With an increasingly competitive long distance market, and the related increase in slamming, the Commission has modified its rules through the issuance of no less than seven policy pronouncements in a mere six-year period.⁴ Additionally, in an attempt to create a strong deterrent to slamming, the FCC's Common Carrier Enforcement Division has issued numerous, well-publicized enforcement actions and entered into numerous consent decrees, while establishing clear forfeiture policies, most recently set at a \$40,000 "base amount."⁵ Unfortunately, however, as

³ See *Allocation Order*, 101 FCC 2d 911 (1985), *recon. denied*, 102 FCC 2d 503 (1985); see also *Investigation of Access and Divestiture Related Tariffs*, 101 FCC 2d 935 (1985).

⁴ See *AT&T Petition for Rulemaking, Notice of Proposed Rulemaking*, CC Docket No. 91-64, 6 FCC Rcd 1689 (1991); *Policies and Rules Concerning Changing Long Distance Carriers, Report and Order*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *recon. denied*, 8 FCC Rcd 3215 (1993); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Notice of Proposed Rulemaking*, CC Docket No. 94-129, 9 FCC Rcd 6885 (1994); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Report and Order*, CC Docket No. 94-129, 10 FCC Rcd 9560 (1995); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order*, CC Docket No. 94-129, released July 15, 1997.

⁵ See generally FCC Common Carrier Scorecard, Fall 1996, p.3 (citing proposed forfeiture amounts between \$40,000-\$200,000 and voluntary payments to the U.S. Treasury of \$500,000); see also *The Commission's Forfeiture Policy Statement and*

conceded in this *FNPRM*, slamming is more prevalent than ever.

In fact, the 11,278 slamming complaints received by the FCC in 1995 represented a six-fold increase since 1993.⁶ Last year, that number exceeded 16,000, and through the first six months of 1997, was already over 12,000.⁷ Slamming complaints on the state level continue to be even more pronounced. For example, US West reported that slamming complaints from its customers rose 45% between 1994-1996, with the Company averaging 23,000 complaints *per month* between January and April of this year.⁸ The Wisconsin PSC reports that slamming complaints have more than doubled between 1995 and 1996.⁹ Most telling, however, as Commissioner Susan Ness indicated in her testimony before the Senate Subcommittee on Communications "because most slammed consumers grin and bear it, we don't know how many of the 50 million carrier selection changes made each year result from slamming."¹⁰

TPV Services is sensitive to the Commission's challenging mandate to balance

Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order, CI Docket No. 95-6 (released July 28, 1997).

⁶ *FNPRM*, para. 6.

⁷ *Id.*; see also Testimony of Commissioner Susan Ness Before the Subcommittee on Communications, Billings, Montana (August 12, 1997).

⁸ Lisa Harell, *Slamming Complaints Explode*, Journal of Business-Spokane, July 24, 1997, at A1 (based on reports from US West's entire 14-state region).

⁹ Lee Bergquist, *\$1 Million 'Slam' Order Issued, Stealing of Phone Customers a Continuing Problem*, The Milwaukee Journal Sentinel, October 19, 1996, at 1.

¹⁰ See *supra* note 7.

the industry's needs for flexibility with the need to protect consumers from deceptive marketing tactics.¹¹ Nonetheless, TPV Services respectfully submits that the Commission has not made the fullest use of third-party verification as a customer-neutral tool to reduce the number of slamming incidents — especially in light of the continued abuses involving both LOAs and “welcome packages.”¹² While Section 258 finally establishes clear reimbursement procedures, technological developments still enable carriers to continue to make large numbers of PC changes with relative ease at low marginal costs and, barring a significant monetary penalty resulting from a formal resolution of a complaint at the state or federal level, with the same economic incentives.¹³

Thus, while implementing the liability provision of Section 258(b), the Commission should also continue to enhance the reliability of PC verifications and submissions through independent third-party verification. TPV Services believes that the following proposals, if adopted, will reduce the overall occurrences of slamming.

¹¹ See *Report and Order*, 10 FCC Rcd 9560, para. 4.

¹² For example, as of January 1, 1997, the State of California now requires carriers to obtain third party verification for *all* solicited PC changes, regardless of the solicitation method used. See Cal. SB 1140 (1996); Cal. P.U.C. Code Section 2889.5.

¹³ See *FNPRM*, para. 4. TPV Services agrees with the Commission's assessment that Section 258 “has added an economic disincentive” because the unauthorized carrier must remit any collected charges to the authorized carrier. *FNPRM*, para. 9. However, barring an additional penalty from a government agency, TPV Services contends that monetary benefit can still be derived from volume slamming since some consumers will not take affirmative action to undo the switch.

III. The Commission Must Adopt Clear Guidelines Regarding TPVs

(A) The Commission Should Define a "Qualifying Independent Third Party Verification Entity"

Currently, the only requirement for TPV is articulated in Section 64.1100 of the Commission's rules which allows IXCs to submit PC change orders generated by telemarketers in one of four ways, including when:

"An appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the customer's oral authorization to submit the PIC change order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number).¹⁴

Ironically, while a more explicit definition was contained in the original 1991 AT&T/MCI settlement that formed the basis of the Commission's current PC change verification requirements, the Commission never formally adopted this definition in its rules.¹⁵

Accordingly, TPV Services suggests that the Commission adopt the following definition of an independent third-party verification entity:

An "Independent Third-Party Verification Entity" is an entity that:

¹⁴ 47 C.F.R. §64.1100(c).

¹⁵ The AT&T/MCI settlement defined TPV as "an appropriately qualified (i.e., capable of performing large scale verification processes as specified herein) person retained by an IXC to perform verification or auditing functions described in this section and in which the IXC has no ownership interest and which performs no telemarketing, direct mail, or other sales solicitation functions for the IXC." *American Telephone and Telegraph Company Petition for Rulemaking, NPRM*, 6 FCC Rcd 1689, Appendix A (1991).

- (A) *Is independent from the entity that seeks to provide or market the new service;*
- (B) *Is not directly or indirectly managed, controlled, directed or owned, wholly or in part, by an entity that seeks to provide or market the new service, or by any corporation, firm or person who directly or indirectly manages, controls, directs or owns more than five percent of the entity seeking to provide or market the new service;*
- (C) *Operates from facilities physically separate from those of the entity that seeks to provide or market the new service;*
- (D) *Does not derive commissions or compensation based on the number of sales confirmed.*

By incorporating such a definition, the Commission will (1) eliminate lingering conflicts of interests arising from the use of commission-based compensation methods with TPV providers; (2) clarify the true “independence” with regard to the structure and operation of TPV providers; and, (3) instill confidence that TPV is a viable option for telecommunications carriers and telemarketers that can ensure compliance with the FCC’s PC change verification rules.

(B) The Commission Should Adopt a Self-Certification Process for TPV Entities

To further ensure the integrity of TPV for both the consumer and the carrier/marketer, the Commission should adopt a certification process for entities that qualify to provide third-party verification services. Additionally, this certification process would enable TPV providers to assume full liability, as discussed herein, for any erroneous PC change submissions made by the TPV.

This self-certification process would be simple, efficient, and, importantly, pose

little administrative burden on the Commission. For example, under this approach, the Commission could require any TPV entity seeking to provide verification services to file a brief, one-page declaration stating that it comports with the definition of a TPV entity as outlined above. In the event that complaints are filed against a carrier where the PC change was submitted in error by the TPV, the Commission could then hold the TPV fully liable by issuing a warning, imposing a forfeiture, or revoking the TPV entity's certificate in the event that repeated errors occur due to the entity's malfeasance.

This minimum self-certification requirement would safeguard the public interest by ensuring that only eligible entities provide TPV services to telecommunications carriers and telemarketers. Moreover, through this process, telecommunications carriers and telemarketers would be given the necessary assurance that they can rely on the TPV entity's service to implement PC changes as a "neutral administrator," relieving the underlying carrier from all liability.

IV. Independent Third-Party Verification Entities Should be Permitted, and in Some Instances Required, to Submit PC Changes With All Attendant Liabilities

Both Congress and the Commission realize that as the competitive telecommunications marketplace is rapidly evolving, slamming will no longer be a problem unique to the traditional long distance market.¹⁶ In fact, competition is

¹⁶ See H.R. Conf. Rep. No. 104-458, 104th Congress., 2d Sess. 136 (1996) (noting that the House Amendment to Section 258 is designed to extend the protections of the current rule to local exchange carriers as well); *see also FNPRM*,

emerging in the local telephone service markets, while LEC entry into in-region long distance is imminent. This new competitive environment will blur traditional distinctions for consumers, generate numerous conflicts of interest among providers, and further complicate the Commission's efforts to eliminate unlawful local and long distance PC changes.¹⁷

Accordingly, TPV Services proposes that the Commission apply its slamming rules to both the long distance and local markets.¹⁸ However, when implementing Section 258, TPV Services proposes that the Commission expand the scope of Section 64.1100 to include both "telecommunications carriers *or independent third party verification entities*." Such a modification is entirely consistent with the spirit of Section 258 as well as the Commission's continuing obligation to reduce the occurrences of slamming.¹⁹

Thus, in instances where the entity seeking to provide service is independent

paras. 11-15.

¹⁷ For example, as LECs are permitted to enter in-region long distance markets, or pursue alliances with long distance providers, they will no longer be acting as neutral third parties charged with implementing a consumer's PC preference. Rather, these LECs will have strong financial incentives to maintain service as the local provider while encouraging PC changes to their long distance service.

¹⁸ See *FNPRM*, para. 11.

¹⁹ While Section 258 imposes liability on "telecommunications carriers" that violate the Commission's verification procedures, under Sections 4(i), and 303(r) of the Communications Act, the Commission has broad authority to implement Congressional intent. 47 U.S.C. §§154(i), 303(r). Courts have held that the Commission's authority under these sections is expansive. See *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 793 (1978).

from the carrier that will ultimately execute the PC change (i.e., a different company and/or has no financial interest), under Section 64.1100, TPVs *should be permitted* to submit the PC change after completing the necessary verification. Allowing the TPV to submit the PC change would give consumers increased protection from unlawful PC changes because the neutral TPV, with no financial interest in the transaction, can ensure that the PC change is accurate.²⁰ Moreover, allowing the TPV to submit the PC change, particularly where the TPV is already employed by the carrier seeking to provide service, would be administratively simple, and would eliminate the carrier's required expense of processing this verification information and submitting the PC change.²¹

Also, TPV Services agrees with the Commission that Section 258 does not require that an executing carrier duplicate the PC change verification efforts of an independent submitting carrier.²² However, TPV strongly believes that the executing carrier, as the local carrier for the subscriber who also must undo the unauthorized PC switch, would want the assurance that the PC change submitted is in fact correct to maintain positive customer relations. TPV provides this assurance as a customer-

²⁰ It is important that the TPV entity not charge the carrier for making the PC change. Costs for making PC changes must be included in the TPV entity's base rate, otherwise, there could be an incentive for the TPV to submit unauthorized PC changes.

²¹ Under the current framework, the TPV reports its findings to the IXC, who then must submit the PC change.

²² *FNPRM*, para. 14.

neutral service.

Secondly, to eliminate any potential conflicts of interest and reduce unlawful PC changes in the newly emerging competitive marketplace, TPV Services urges the Commission to *require* a TPV to submit the PC change where: (1) the telecommunications carrier seeking to provide service is both the submitting and executing carrier or, (2) the executing carrier has a financial or other interest in the submitting carrier.²³ Mandating TPV PC submissions will provide subscribers with adequate safeguards and ensure that a neutral third party is involved any time such a blatant conflict of interest exists. Moreover, by broadening this proposal, as suggested by TPV Services, to all “telecommunications carriers,” not just LECs, the Commission’s rules will cover any prospective dual relationship.

Concurrent with responsibility is accountability. In the event an erroneous PC change is submitted by a TPV, under the Commission’s “but for” approach,²⁴ the TPV should be *fully liable* for the value of all required reimbursement and/or forfeitures that would have been imposed on the unauthorized carrier. In turn, the unauthorized carrier must be absolved from all liability. Thus, if the carrier complies with the Commission’s dictates for independent third party verification, and the TPV entity submits the erroneous PC change as a result of its verification procedures, then the

²³ See *FNPRM*, para. 15. AT&T has also suggested that a neutral third party administer PC changes to avoid the inherent conflicts of interest between competing carriers. See Letter from Bruce K. Cox, AT&T to John Muleta, FCC (Sept. 27, 1996), CC Docket No. 94-129.

²⁴ *FNPRM*, para. 34.

carrier should not be held liable for the acts of the TPV. As a practical matter, relieving the carrier of all attendant liability will promote the utilization of this pro-consumer proposal.²⁵

Procedurally, this requirement is easily incorporated into the Commission's proposed rules and represents an efficient regulatory means to achieve the clear Congressional mandate of Section 258(b). With regard to carrier-to-carrier and carrier-to-subscriber liability, when a subscriber who is subject to an erroneous PC change submitted by a TPV pays the unauthorized provider, the TPV would be liable to the authorized provider for all charges paid by such subscriber as well as providing full reparation for any harm suffered by the subscriber, i.e., making the consumer whole through lost premiums, etc.²⁶ Moreover, with regard to unpaid charges, consistent with the Commission's 1995 conclusion, equity dictates that the subscriber should be responsible to the properly authorized carrier for the amount the subscriber would have paid if the PC change had never been made.²⁷ However, the TPV must reimburse the authorized carrier for any additional lost revenues or administrative costs attendant to the time period in which the authorized carrier was

²⁵ Obviously, carriers will not cede submitting authority to a TPV without clear assurances that they will be relieved from all attendant liability.

²⁶ See *FNPRM*, paras. 28-30.

²⁷ See *FNPRM*, para. 26 (citing *1995 Report and Order*, 10 FCC Rcd at 9579). Nothing in Section 258 refutes the fact that the slammed subscriber still receives service.

not providing service.²⁸

V. The Commission Should Require that All PC Freezes Be Submitted or Verified by Independent Third Party Verification Entities

Noting the potential anti-competitive effects of PC freezes, the Commission seeks comment on “how best to reconcile the competing strains” of providing adequate consumer protection and encouraging competition among service providers.²⁹ Based on the widely disparate comments filed in response to MCI’s recent Petition for Rulemaking on PC freezes,³⁰ perhaps no issue in the instant rulemaking divides the industry as much as how the Commission should effectively address PC freezes.

On one hand, when properly implemented, PC freezes can provide added consumer protection against widespread unauthorized PC changes. Conversely, as the Commission indicated, PC freezes increase the burden of competing carriers in securing new customers as they have the effect of “locking in” the subscriber to the existing service provider.

In an attempt to draw the proper balance regarding PC freezes, the Commission tentatively concluded that:

“a carrier that mails to a subscriber (a) an explanation of a PC freeze; (b)

²⁸ See *FNPRM*, para. 27.

²⁹ *FNPRM*, para. 22.

³⁰ *MCI Petition for Rulemaking*, RM-9085, Public Notice, DA 97-942 (released May 5, 1997).

an explanation of the subscriber's right to request such a freeze for its telecommunications service; and (c) advice on how the subscriber can obtain a PC freeze, would be acting consistent with the goals and policies of the Act and the Commission's rules and orders."³¹

The Commission also tentatively decided that promotional forms of PC freeze solicitations, designed to enhance the competitive position of the carrier, are at odds with the Commission's policies.³²

TPV Services agrees with the Commission's conclusion that "promotional-type" PC freeze solicitations create unfair advantages for incumbents and foster consumer abuses due to the inherent confusion attendant to such solicitations.³³ However, in an emerging competitive marketplace, TPV Services also submits that even "neutral" PC freeze solicitations, i.e., devoid of a carrier's marketing materials, can be abused to manipulate the carrier selection process through pro-active "customer retention" programs.³⁴

Therefore, where a PC freeze is solicited through either a neutral or promotional-based solicitation, whether for local or long distance service, third-party verification should be required in *all instances* before a carrier can implement a PC

³¹ *FNPRM*, para. 23.

³² *Id.*

³³ As the Commission correctly points out, where the LEC and the IXC are affiliated, or where the LEC provides long distance service, the LEC can use the PC freeze to create an unfair advantage for its own long distance service or that of its affiliated IXC. *FNPRM*, para. 23.

³⁴ See Comments of Cox Communications, *MCI Petition for Rulemaking*, RM-9085.

freeze.

Requiring third-party verification for PC freezes is the optimal way for the Commission to provide adequate consumer protection and encourage competition among service providers. Under this scenario, carriers would still be permitted to mail promotional material inviting subscribers to seek a PC freeze. The subscriber, however, would be required to contact an independent third-party verification entity that would provide information regarding PC freezes and confirm that the subscriber wishes to effectuate the freeze. The third-party verification entity would then submit the PC freeze to the subscriber's LEC or other carrier responsible for executing the PC freeze.

Adoption of this proposal relieves the Commission of the First Amendment-sensitive task of "policing" the content of carriers' PC freeze solicitation materials in order to ensure that they are not promotional in nature. Most importantly, however, adoption of this proposal would allow consumers to retain the PC freeze — a powerful tool to combat unauthorized PC changes — while preventing consumers from becoming unwitting pawns in carriers' efforts to preclude important pro-consumer competition.

VI. The Commission Should Require Third Party Verification Where PC Changes Are the Result of In-Bound Calls

TPV Services agrees with the Commission's tentative conclusion that Section 258 correctly applies to consumers who place in-bound 800 calls to carrier marketing

centers.³⁵ There is no public policy reason to exempt in-bound calls from the protections afforded other consumers under the Commission's PC change verification rules. As the National Association of Attorneys General stated in its comments in the Commission's 1995 rulemaking concerning LOAs,

"The potential for fraud, overreaching and abusive telephone sales practices is documented by cases of telecommunications providers that have "packed" unordered, optional services with customer telephone orders for other services. This proven potential for customer abuse exists independent of who initiates the telephone call."³⁶

However, the Commission's current PC change verification procedures for in-bound calls must be revised as a result of the new competitive climate. Under the Commission's current rule, a telecommunications carrier may submit a PC change if it has obtained the subscriber's electronic authorization, placed from the telephone number on which the primary carrier is to be changed to the carrier's 800 number, and recorded the information contained in Section 64.1150.³⁷

As an initial matter, the potential for a single carrier to offer local and long distance service creates motivation for carriers to sell an additional service in addition to the one requested.³⁸ Moreover, as the Commission correctly notes, in-bound calling will be of even greater significance as competition emerges in the local

³⁵ *FNPRM*, para. 19.

³⁶ *See* Comments of National Association of Attorneys General, p.10 (January 9, 1995), *Notice of Proposed Rulemaking*, CC Docket No. 94-129.

³⁷ 47 C.F.R. §64.1100(b).

³⁸ *See FNPRM*, para. 19.

exchange market and as LECs enter the long distance market.³⁹

Equally important, the utilization of electronic verification, as proposed in the current rules, fails to confirm that the subscriber, rather than someone using the subscriber's telephone, actually authorized the PC change. As a practical matter, the same flaws and potential for abuse applicable to LOAs apply to incoming calls. For example, a family member, not authorized to make the family's PC change, could call a telemarketer's call center in response to a promotional ad and then during the phone call be subject to an unauthorized conversion just as easily as a consumer who was contacted by the telemarketer.⁴⁰

Therefore, TPV Services proposes that carriers electing to confirm sales electronically should do so through the use of a TPV. This will not only ensure that competing telecommunications carriers are afforded ample flexibility in marketing their services, including services provided through the use of 800 numbers, but it will also give consumers the necessary protections associated with unlawful PC changes that result from in-bound telephone calls.

VII. The Commission Should Require LOAs that are Combined With Any Form of Promotional Material to Include a "Unique Identifier"

In response to increasing complaints regarding the deceptive marketing practices of LOAs, the Commission adopted rules establishing the minimum form and

³⁹ *Id.*

⁴⁰ See Comments of Consumer Action (January 9, 1995), *Notice of Proposed Rulemaking*, CC Docket No. 94-129.

content of these documents.⁴¹ These rules were primarily designed to allow competing long distance carriers sufficient marketing flexibility while mandating the necessary information required to *educate* potential subscribers of an LOA's ramifications.

Nonetheless, as the Commission is well aware, many incidents of slamming continue to occur through the use of LOAs printed as contest entry forms, including popular "sweepstakes boxes," prize claim forms, solicitations for charitable contributions, or checks made payable to the consumer.⁴² Importantly, while many of these LOAs may be in compliance with the Commission's current requirements, incidents of LOA-based slamming continue to occur as a result of unscrupulous agents, consumer fraud, prank, or even the submission of forms by unauthorized residential household members (i.e., children, as opposed to the authorized "subscriber" under the Commission's rules).

TPV Services does not believe it is necessary to prohibit these forms of marketing incentives designed to induce customers to switch carriers. However, the Commission's current rules, primarily focused on educating unwitting consumers, do

⁴¹ See *Report and Order*, 10 FCC Rcd 9560 (1995) (establishing Section 64.1150, "Letter of Agency Form and Content"); see *Memorandum Opinion and Order on Reconsideration*, CC Docket 94-129 (modifying Section 64.1150). Notwithstanding the fact that reconsideration is complete, the Commission indicated that it is soliciting further comment on the issue of LOAs as they relate to the implementation of Section 258 in the subject *FNPRM*. See *Memorandum Opinion and Order on Reconsideration*, para. 43.

⁴² *NPRM*, 9 FCC Rcd 6885, para. 6.

not specifically include prophylactic measures to discourage the submission of fraudulent or unauthorized LOA forms. Accordingly, to the extent permitted by consumer privacy laws, TPV Services proposes that the Commission amend Section 64.1150(e)(1) of its rules to require that all LOAs include a “unique identifier,” such as the subscriber’s social security number or driver’s license identification number, or other personal identification feature.⁴³ In so doing, telecommunications carriers and their agents will receive LOAs that can be self-verified through a variety of databases at their disposal. Such a requirement should provide the carrier reasonable assurances that the signatory is the actual subscriber, thereby enhancing the integrity of LOAs.

VIII. Conclusion

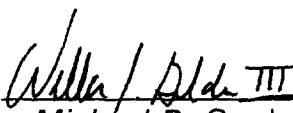
As the Commission seeks to implement Section 258, furthering Congress’ goal of eliminating slamming, TPV Services respectfully urges the Commission to strengthen its current anti-slamming rules by facilitating the widest possible use of independent third-party verification services. Adoption of TPV Services’ proposals will ensure that consumers receive the necessary protections from potential incidents

⁴³ The Commission’s current rules require an LOA to include only the subscriber’s billing name, address and telephone number. 47 C.F.R. §64.1150(e)(1). Obviously, the required “unique identifier” would have to adhere to any applicable federal or state consumer privacy laws governing this transaction.

of slamming while promoting telecommunications carriers' ability to enter new markets and promote their products in an aggressive fashion.

Respectfully submitted,

TPV Services, Inc.

By: 
Michael R. Gardner
William J. Gildea, III
Harvey Kellman

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September 15, 1997

Certificate of Service

I, Michael C. Gerdes, hereby certify that copies of the foregoing "Comments of TPV Services, Inc.," were delivered by hand, on September 15, 1997 to the following:

Catherine Seidel
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N.W., Room 6120
Washington, DC 20554

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Enforcement Division
Common Carrier Bureau
Federal Communications Commission
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